IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1860 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ORIENTAL INSURANCE COM LTD - Petitioner(s)
Versus
LAXMIBNEN W/O KRUSHNAKUMAR ZALA - Respondent(s)

==========

Appearance :
MR MAULIK J SHELAT for Petitioner(s) : 1,
MS SNEHA A JOSHI for Respondent(s) : 1,
MR DIVYESH A JOSHI for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 03/07/2007

ORAL JUDGMENT

The petitioner has challenged order dated 15/12/2005 passed by the Motor Accident Claims Tribunal [Aux.], Sabarkantha at Himatnagar, below

Exh. 15 in M.A.C. Petition No. 565/2005. By the said order the Tribunal has rejected the application of the petitioner praying for impleading the driver, owner and the insurer of Motorcycle bearing Registration No. GJ-9-L-3946 as opponents.

2. I have perused the record of this petition including the claim petition filed by respondent. In the claim petition it is the case of the respondent that while she along with her husband and child was standing near the Motorcycle which was parked on the edge of the road and after her husband answered the call of nature, he was about to start the motorcycle, the offending vehicle i.e., Jeep Bearing Registration No. GJ-5-L-6892 came from the opposite side and collided with the motorcycle. As a result of the same, they suffered serious injuries. It appears that the driver and the owner of the offending vehicle have not filed written statement. The petitioner is the insurer of the offending vehicle. It has denied the facts stated in the petition.

2.1. The Tribunal has observed that the case of the respondent who is the claimant in the claim petition, is that due to the negligence of the driver of the jeep, the accident occurred; hence there is no need to join the owner as well as the insurer of the motorcycle.

3. I have heard Mr. Maulik Shelat, learned advocate for the petitioner and Mr. Divyesh A Joshi, learned advocate for respondent. As stated above, at present there is nothing on record to show that the motorcycle was in motion and that due to some negligence of the husband of respondent the

accident occurred and there is no material to show that the husband of respondent, who is also the owner of motorcycle, contributed to the accident. In view of the same, the Tribunal's conclusion appears to be just and proper and it is not required to be disturbed. However, in the course of the trial, if it is found that there was some negligence on the part of owner of the motorcycle also, the petitioner will be at liberty to renew its request for impleading owner and insurer of the motorcycle by filing appropriate application. As and when such application is filed, it will be decided on its merits.

With the aforesaid, this petition stands disposed of. Rule is discharged.

[Akshay H Mehta, J.]

* Pansala.